

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket No. 93-253

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OMNIPPOINT COMMUNICATIONS, INC.
REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, files this Reply to the oppositions and other comments filed concerning Omnipoint's Reconsideration Petition of the Fifth Report and Order in the above-referenced docket.¹ Omnipoint generally supports the entrepreneur band rules. As discussed below, the record shows that commenters overwhelmingly endorsed Omnipoint's proposals for balanced change of the broadband PCS auction rules in ways that would increase the viability and financial independence of entrepreneur licensees.

I. Omnipoint's Entrepreneur Band Eligibility Proposal Was Supported By A Diversity Of Commenters.

Omnipoint believes that the Commission's entrepreneur-block eligibility rules can strike a better balance between avoiding "shams" and encouraging licensees that have the financial backing to be long-term independent competitors to the MTA licensees. In its Reconsideration Petition, Omnipoint made a simple, four-point entrepreneur-band proposal that achieves these two goals:

¹ Fifth Report and Order, PP Docket No. 93-253, FCC 94-178, 59 FR 37566 (July 22, 1994) ("Fifth Report and Order"). Omnipoint filed its "Petition for Clarification and Reconsideration" (the "Omnipoint Reconsideration Petition") on August 22, 1994. On September 9, 1994, Omnipoint filed its "Comments On Petitions For Reconsideration" (the "Omnipoint Comments").

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- **The Basic Eligibility Rule:**

At the time the short-forms are filed, each applicant, and each attributable investor in the applicant, should be required to meet the Commission's \$125 gross revenues/ \$500 million total assets cap (the "cap"). For up to five years after the short-forms are filed, each new attributable investor in the applicant/licensee should be required to individually meet the cap at the time of its attributable investment.

MEANS/SDN supports Omnipoint's proposal to apply the cap to investors in the applicant individually.² In addition, MasTec agrees with Omnipoint that, under the current rule, the timing of eligibility is unclear and that the current five-year eligibility rule stifles successful investors.³

- **The 20% Attribution Threshold:**

The "passive equity" attribution threshold for voting equity should be set at 19.99%. Investors in the applicant who hold less than 20% (and do not have de facto control) would not subject to the cap.

BET Holdings, Inc. generally agrees with Omnipoint's second proposal for a slight relaxation in the attribution threshold.⁴ In addition, Pacific Bell Mobile Services explicitly endorses the 20% threshold.⁵

² Comments and Partial Opposition of Minnesota Equal Access Network Services, Inc. and South Dakota Network, Inc. ("MEANS/SDN") at 9-10.

³ Mastec, Inc., Response on Petitions for Reconsideration of the Fifth Report and Order, at n.10, 20.

⁴ BET Holdings, Inc., Comments on Petitions For Reconsideration and Clarification, at 10-11.

⁵ Opposition and Comments of Pacific Bell Mobile Services, at 14.

- **The Reduction Of Risk Of Post-Auction Ineligibility:**

The Commission should issue guidelines on passive investor participation in the licensee that are deemed not to constitute *de facto* control of the applicant/licensee. In addition, when enforcing the *de facto* standards, the Commission should give deference to good-faith formation of control groups. These steps reduce the risk for investors, and so reduce the cost of capital for entrepreneurs.

Pacific Bell also agrees with Omnipoint's proposals to bring more certainty to the Commission's *de facto* control determinations.⁶

- **The Exclusion of PCS Investments From The Personal Net Wealth Rule:**

So long the investor has less than \$100 million in personal net worth prior to his/her PCS investment, the personal net worth rule should not prohibit such financing. By excluding only wealth associated with the investment in PCS, the rule would prevent investments by individuals with over \$100 million. However, this rule would permit investments by individuals that started out with less than \$100 million but, due to investments in PCS, subsequently go over that limit.

No party opposed Omnipoint's proposal to exclude increases in personal net worth due to PCS investment from the personal net worth calculation.

Additionally, commenters supported Omnipoint's requests for clarification and the alternative "multiplier" approach. Mankato Citizens Telephone Company broadly supports Omnipoint's request for the Commission to clarify that non-controlling investors in "investors in the applicant" are not attributable toward the applicant.⁷ MEANS/SDN also supports

⁶ *Id.* at 11-12.

⁷ Partial Opposition to Petitions for Reconsideration of Mankato Citizens Telephone Company at 3.

Omnipoint's alternative proposal for the Commission to apply a "multiplier" or weighted average, if it decides against Omnipoint's first proposal.⁸

**II. The Only Commenter Opposed To Omnipoint's Proposals -- AIDE --
Misunderstood Them.**

AIDE lumps Omnipoint's Reconsideration Petition into a group of eleven other petitions that advocate a relaxation of "the size and control-group limitations for all or some (typically minority) PCS applicants." It accuses Omnipoint, and the eleven others, of making proposals that will serve only their self-interest, but which will undermine the Commission's goal of awarding licenses to true designated entities and the alleged Commission goal of maximizing revenues to the government.⁹

Specifically, AIDE states that Omnipoint requests "substantially more outside investments permitted in Designated Entities." It is difficult to respond to an opposition couched in such vague terms. If AIDE means that Omnipoint supports easier financing for designated entities that lack access to capital, that is true; but, we cannot understand why AIDE would be opposed to easier financing for its members. If AIDE means that Omnipoint supports a dilution in designated entity control of the license, that is incorrect, and Omnipoint has clearly said so.¹⁰ Ironically, it is AIDE that proposes to allow designated entities to "flip" licenses to ineligible entities and to allow ineligible entities to hold 100% of the passive equity.¹¹

⁸ Comments and Partial Opposition of MEANS/SDN at n.10.

⁹ Opposition of the Association of Independent Designated Entities of the Fifth Report and Order, at 2-3, n.3 ("AIDE"). Contrary to AIDE's assertion at page 3 of its Opposition that "no auction decision will threaten [the Commission's] unstated, albeit obvious, goal of maximizing auction revenues," Omnipoint does not believe that this is the Commission's "unstated" goal, as it is contrary to the mandates of the 1992 Budget Act. 47 U.S.C. § 309(j)(7)(A).

¹⁰ Omnipoint Reconsideration Petition at 1, n.10. Omnipoint Comments at 2, 5.

¹¹ Petition for Reconsideration of the Association of Independent Designated Entities of the Fifth Report and Order, at 17-18, n. 25.

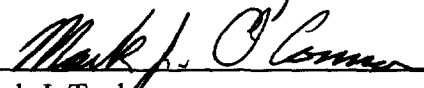
Further, the thrust of all of Omnipoint's proposals is to create opportunities for designated entities and other new entrants to be lasting competitors in broadband PCS -- that requires strong financial backing and it requires rules to prevent "shams." The fact that more capital will be available to designated entities under Omnipoint's plan supports designated entity licensees, it does not create a special-interest windfall for a designated entity. Most important, Omnipoint's proposal keeps giant telecom companies from controlling licenses on the entrepreneur's band, which furthers the Congressional mandate for the Commission to promote new entrants, including designated entities.¹² In contrast, AIDE's proposals to exclude all non-designated entity new entrants from the entrepreneur's band and then allow designated entities to sell off their licenses are clearly directed toward the short term self-interest of its members.

III. Conclusion.

For the foregoing reasons, and for the reasons that Omnipoint has articulated in its Reconsideration Petition and its Comments in this proceeding, we urge the Commission to adopt Omnipoint's proposals.

Respectfully submitted,

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Date: September 19, 1994

¹² See Omnipoint Comments at 7-10.

CERTIFICATE OF SERVICE

I, Mark J. O'Connor, hereby certify that on this 19th day of September, 1994, a copy of the foregoing Omnipoint Communications, Inc.'s Reply To Oppositions To Petition For Reconsideration was sent via first-class U.S. Mail, postage pre-paid, to the following:

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